a

CLASS ONE VIDEO DISTRIBUTORS SDN BHD & ANOR

v.

CHANAN SINGH SHER SINGH & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
b HAIDAR MOHD NOOR J
[CIVIL SUIT NO: D5-22-460-95]
26 MARCH 1997

c ***CIVIL PROCEDURE:*** *Contempt of Court - Breach of consent order - Order of committal, application for - Failure to endorse penal notice - Whether fatal to case - Rules of the High Court 1980, O. 45 r. 7*

COPYRIGHT: *Film, on video - Reproduction of original copies for rental in breach of consent order - Infringement of copyright - Licensees - Right of action - Copyright Act 1987, s. 36*

d The 1st plaintiff had the rights to the films "PUTERA" and "SEMBILU". The 2nd plaintiff was the Assignee of the said films. The 2nd defendant was the owner of a video shop.

e The relevant portions of a consent order ('the Order') entered into between the plaintiffs and the defendants were as follows:

1. The second defendant acknowledges that:

   (a) ...

f (b) the second plaintiff is the assignee of the film entitled "PUTERA" and "SEMBILU" and pursuant to the acknowledgment given ... the second defendant whether by himself, his employees, servants or agents agree to restrain:

   (c) ...

g (d) from reproducing in any material form or otherwise infringe the first plaintiffs rights to the film entitled "PUTERA" and "SEMBILU".

During two separate raids on the 2nd's defendants premises, a PUTERA tape and a SEMBILU tape were seized. The 2nd defendant argued that the tapes were original tapes and were purchased for the purpose of rental. The 2nd h plaintiff contended that the 2nd defendant had no license or any right to those tapes and also had no license or any right to offer the tapes for rental.

This was an application by the 2nd plaintiff for a committal order against the 2nd defendant for contempt of Court for breaching the terms of the Order.

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The issue was whether the 2nd defendant, his employees, servants or agents had breached para. 1(d) of the Order.

At the hearing of the committal proceedings, a preliminary issue was raised by Counsel for the 2nd defendant ie whether the failure to indorse the penal notice as required under O. 45 r. 7(4) of the Rules of the High Court 1980 ('RHC') as per Form 87 would be fatal to the 2nd plaintiffs application.

Held:

[1] On the preliminary issue, O. 45 r. 7(4) of the RHC are similar to Singapore's O. 45 r. 7(4) and the English O. 45 r. 7(4)(a). Hence the English Court of Appeal case of *Sofroniou v. Szetti* and the Singapore Court of Appeal case of *Allport Alfred James v. Wong Soon Lam* which set out the circumstances for the Court to invoke its discretionary power under O. 45 r. 7(6) are applicable here. Pursuant to O. 45 r. 7(4) the penal notice must be indorsed on the copy of the order 'served under this rule' and service under this rule means the personal service under r. 7(2)(a). Once these two requirements are complied with, the order may be enforced by an order of committal under O. 45 r. 5.

[2] However, in the case of an order requiring a person to abstain from doing an act, the Court, under O. 45 r. 7(6), is empowered in certain circumstances to enforce the order, notwithstanding that 'the service of a copy of the order has not been effected in accordance with this rule.' The words 'this rule' clearly means r. 7, and service effected in accordance with r. 7 means in accordance with r. 7(2)(a) and (4) ie service of a copy of the order with the penal notice indorsed on it. It therefore follows that if a copy of the order had not been served personally eg by registered post, or if it had been served personally but the copy served does not contain the penal notice, then the service of the copy of the order has not been effected 'in accordance with this rule' ie r. 7. In such a case, the Court has a discretion under r. 7(6) to enforce the order if the following condition is satisfied, namely, the person against whom the order sought to be enforced has had notice thereof either:

(a) by being present when the order was made, or

(b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

[3] On the facts of the present case, though the service of the copy of the Order had not been "effected in accordance" with r. 7, the 2nd defendant had full knowledge of the terms of the Order and the Order was for the 2nd defendant to abstain from doing certain acts. The Court therefore has

the discretion to enforce the Order because it is satisfied that the 2nd defendant had notice of the Order in one of the ways specified in O. 45 r. 7(6)(a) & (b) of the RHC. The defect in not complying with the endorsement of the penal notice was not fatal so long as the 2nd Defendant had knowledge of the terms of the Order.

[4] On the contempt proceedings, the standard of proof necessary in a civil contempt case is proof beyond all reasonable doubt.

[5] The provision on infringement of copyright is s. 36(1) of the Copyright Act 1987 ('the Act'). The phrase "an act the doing of which is controlled by copyright under the Act" refers to s. 13(1) of the Act. The relevant provision is s. 13(1)(e) namely the distribution of the copies of the work to the public by sale, rental, lease or lending.

[6] Under the Act, the distribution right is not exhausted even after a sale, thus entitling the right holder to control not only the rental but the resale of the copies of his work. The legislative intent in enacting s. 13(1)(e) is to heed the calls for the distribution right as a restrictive act for the copyright owners to participate in the lucrative and expanding rental industry. It is therefore proper and right for the Court to give effect to the legislative intent.

[7] As the 2nd defendant did not deny that he was in possession of the original tapes "PUTERA" and "SEMBILU" and they were rented without the license or permit of the 2nd plaintiff, the assignee of the rights to the said tapes, he had committed an infringement under s. 36(1) read with s. 13(1)(e) of the Act. The 2nd defendant had therefore committed contempt by breaching the terms of para. 1(d) of the Order.

[Order accordingly.]

Cases referred to:

Leow Seng Huat v. Low Mui Yein [1996] 5 MLJ 381 ***(refd)***

M/s. Hisham, Sobri & Kadir v. Kedah Utara Development Sdn Bhd & Anor [1988] 2 MLJ 239 ***(cit)***

Iberian Trust Ltd v. Founders Trust & Investment Co Ltd [1932] 2 KB 87 ***(cit)***

Allport Alfred James v. Wong Soon Lam [1989] 1 MLJ 338 ***(foll)***

Sofronian v. Szetti [1991] FCR 332 ***(foll)***

Nicholls v. Nicholls (147 NLJ 61, The Times 21 January 1997) ***(refd)***

Tin Shi Kian & Anor v. Red Rose Restaurant Sdn Bhd [1984] 2 MLJ 313 ***(refd)***

Legislation referred to:
Copyright Act 1987, ss. 13(1)(e), 36(1), (2)
Rules of the High Court 1980, O. 45 r. 7(4), (6)(a), (b), O. 52 r. 2
Rules of the Supreme Court [Sing], O. 45 r. 7(4)(6)
Rules of Supreme Court [UK], O. 45 r. 7(4)(a)

Other source referred to:
Copyright Law in Malaysia, by Khaw Lake Tee, 1994

For the plaintiff - S.G. Yeoh; M/s. Wriggles Worth & Co.
For the 2nd defendant - Linda Wong; M/s. Tay & Partners

JUDGMENT

Haidar Mohd Noor J:

This is an application by the second plaintiff for a committal order against the second defendant, Daljit Singh a/l Chanan Singh (trading as Pusat Video Dalman) (Encl. 41) for allegedly in contempt of Court for breaching the terms of a consent order dated 12 September 1996 (Encl. 43).

An *ex parte* application for leave of the Court to issue committal proceedings against the second defendant pursuant to O. 52 r. 2 of the Rules of the High Court 1980 ('RHC') was filed by the second plaintiff (Encl. 40). An order was accordingly granted by the Court ('Order').

At the hearing of the committal proceedings, Counsel for the second defendant raised a preliminary issue for the ruling of the Court. The preliminary issue relates to the non-indorsement of the penal notice as required under O. 45 r. 7(4) of the RHC as per Form 87.

Preliminary Issue

It is not disputed that there was non-compliance of the statutory Form 87 by the second plaintiff and the question is whether the failure to indorse the penal notice therein is fatal to the second plaintiff's application. Counsel for the second defendant relied on the case of *Leow Seng Huat v. Low Mui Yein* [1996] 5 MLJ 381 where the learned Judge held that failure to insert the penal indorsement in the order was fatal to the application, citing the case of *M/s. Hisham, Sobri & Kadir v. Kedah Utara Development Sdn. Bhd. & Anor* [1988] 2 MLJ 239 and *Iberian Trust Ltd. v. Founders Trust & Investment Co. Ltd.* [1932] 2 KB 87 in support thereof.

In the case of *M/s. Hisham, Sobri & Kadir's* case the learned Judge did not have the benefits of considering the cases of *Allport Alfred James v. Wong*

Soon Lam [1989] I MLJ 338 and *Sofronian v. Szetti* [1991] FCR 332 which were reported later. However, in respect of *Leong Seng Huat's* case, the two cases referred to by me were not brought to the attention and consideration of the learned Judge. No doubt the two cases are not Malaysian cases but the wordings in our O. 45 r. 7(4) are similar to Singapore's O. 45 r. 7(4) and the English O. 45 r. 7(4)(a). In that event if the two cases were brought to the attention of Hishamuddin J, and argued, I have no doubt that the learned Judge would have exercised his discretion accordingly. In fact the Singapore Court of Appeal in the case of *Allport Alfred James* quoting with approval the English case of *Sofroniou v. Szetti* [1991] FCR 332 in allowing the appeal, in similar vein, said at p. 389:

> The *Sofroniou* case was not available to Chao Hick Tin, JC at the time when he heard the application for committal. We have no doubt that had this construction been put forward and argued before him, he would most likely have come to the same conclusion as we did and would have exercised his discretion and made an order for committal against the respondent.

The issue before the Singapore Court of Appeal in *Allport Alfred James* case turned on the construction of O. 45 r. 7(6) which is in *pari materia* with our O. 45 r. 7(6). In construing O. 45 r. 7(6), it is necessary to look at the relevant parts of r. 7. The circumstances for the Court to invoke its discretionary power under O. 45 r. 7(6) are well set out in the judgment of *Allport Alfred James* case and in my view it is appropriate therefore for me to set them out in extenso (pp. 387-389):

> The issue in this appeal turned on the construction of O. 45 but it is necessary to look at other relevant parts of r. 7. First, under r. 7(2)(a), an order, and, in this case, the injunction, should not be enforced unless 'a copy of the order has been served personally on the person required to do or abstain from doing the act in question'. Next, we come to r. 7(4), which provides:
>
> > There must be indorsed on the copy of an order served under this Rule a notice in Form 87 informing the person on whom the copy is served:
> >
> > (a) in the case of service under para. (2), if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the order, he is liable to process of execution to compel him to obey it; and
> >
> > (b) ...
>
> The important point to note in this provision is that the penal notice must be indorsed on the copy of the order 'served under this rule' and service under this rule means the personal service under r. 7(2)(a). Once these two requirements are complied with, the order may be enforced by an order of

committal under O. 45 r. 5. However, in the case of an order requiring a person to abstain from doing an act, the Court, under O. 45 r. 7(6), is empowered in certain circumstances to enforce the order, notwithstanding that the service of a copy of the order has not been effected in accordance with this rule. Rule 7(6) provides:

> An order requiring a person to abstain from doing an act may be enforced under r. 5 notwithstanding that service of a copy of the order has not been effected in accordance with this Rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either:
>
> (a) by being present when the order was made; or
>
> (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise,

The question is what is meant by the words 'service of a copy of the order has not been effected in accordance with this rule'. The words 'this rule' clearly mean r. 7, and service effected in accordance with r. 7 means in accordance with r. 7(2)(a) and (4), i.e. service of a copy of the order with the penal notice indorsed on it. It therefore follows that if a copy of the order has not been served personally, e.g. by registered post, or if it has been served personally but the copy served does not contain the penal notice, then the service of the copy of the order has not been effected 'in accordance with this rule', i.e. r. 7. In such a case, the Court has a discretion under r. 7(6) to enforce the order if the following condition is satisfied, namely, the person against whom the order sought to be enforced has had notice thereof either:

(a) by being present when the order was made, or

(b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

The recent decision of the English Court of Appeal in *Sofroniou v. Szetti* is a clear authority for the construction we have placed on r. 7(6). In that case, a copy of the order was personally served on the person requiring him to abstain from doing certain acts, but it did not contain a penal notice as prescribed by r. 7(4) of the English Rules of Supreme Court. (Order 45 r. 7 of the English Rules of Supreme Court is in *pari materia* with our O. 45 r. 7.) It was held that the service of the copy was not effected in accordance with r. 7, and accordingly under r. 7(6), the Court has a discretion to enforce the order by an order of committal against the contemner. McCowan LJ, in his judgment, said, at pp. 333-334:

> Mr. Denman, for the respondent, on the other hand, submits that the service being referred to in para. (6) is service which has not been effected in accordance with 'this rule', which includes service of a copy

> which is not indorsed with a penal notice. The appellant, he argues, is and was at all material times a person who had notice of the terms of the order, not by telephone or telegram, but 'otherwise', namely by service of the order, which, despite the absence of the penal notice, did contain the terms of the order.
>
> In my judgment, Mr. Denman's interpretation is the right one. Protection is provided for the person against who it is sought to enforce the order by the words in para. (6) 'may be enforced'

Neil LJ said, at p. 334:

> It is clear from the terms of RSC O. 45 r. 7(4)(a) that in order to comply with the rules any copy of a prohibitory order which is served must be indorsed with a penal notice. Having regard to the earlier practice, however, I am satisfied that O. 45 r. 7(6) should be construed in accordance with the submission put forward by counsel for the respondent. The Court is given a discretion to enforce the order notwithstanding that service has not been effected in accordance with r. 7 (which includes the requirement that the order should be indorsed as provided in para. (4)(a) if the Court is satisfied that the person concerned had notice of the order in one of the ways specified in sub-paras. (a) and (b) of para. (6).

I now revert to the facts of this case. It is not disputed that the Order was made in the absence of the second defendant but in the presence of his counsel and it was not personally served on the second defendant. Further, the Order was drafted by the counsel for the second defendant and the fair copy has not been extracted even by the date of the hearing of the committal proceedings. It is also not disputed that the copy of the Order did not contain the penal notice as required under r. 7(4).

It is observed that at the leave stage of the application for an order of committal before the learned Judicial Commissioner, Counsel for the second plaintiff orally asked for dispensation of personal service as against the second defendant on the ground that he is represented by solicitor and an order was accordingly granted with the further order that service of the notice of motion together with the statement and the affidavit in support be served on Tetuan Tay & Partners (second defendant's solicitor) be deemed to be good service on the second defendant.

In this case though the Order was not personally served on the second defendant I am satisfied that the second defendant having had the benefits of Counsel's advice, is deemed to know of the terms of the Order. In any event the second defendant did not deny that he had no knowledge of the terms of the Order. The word "otherwise" in r. 7(6) would be wide enough to cover this situation. In the circumstances the conditions under r. 7(6) would have

been satisfied though the Order did not contain the penal notice required under r. 7(4). Though the service of the copy of the Order has not been "effected in accordance" with r. 7 but, as I said earlier, the second defendant had full knowledge of the terms of the Order and the Order is for the second defendant to abstain from doing certain acts. In other words, the Court has a discretion to enforce the Order if the Court is satisfied that the second defendant had notice of the Order in one of the ways specified in sub-paras. (a) and (b) of para. 6 of O. 54 r. 7 of RHC. I am so satisfied.

In the circumstances I am of the view, following *Allport Alfred James* case, which cited with approval the English case of *Sofroniou*, that the defect in not complying with the indorsement of the penal notice is not fatal so long as the second defendant had knowledge of the terms of the Order. It has been brought to my attention recently of the English Court of Appeal case of *Nicholls v. Nicholls* (147 NLJ 61, The Times 21 January 1997) where the English Court of Appeal reviewed the previous authorities on the subject of procedural irregularities either in the application to commit or in the committal order. Under the caption "The Result of the Appeal", the said Court of Appeal provided the guidance for future cases as follows:

1. As committal orders involve the liberty of the subject it is particularly important that the relevant rules are duly complied with. It remains the responsibility of the Judge when signing the committal order to ensure that it is properly drawn and that it adequately particularises the breaches which have been proved and for which the sentence has been imposed.

2. As long as the contemnor had a fair trial and the order has been made on valid grounds the existence of a defect either in the application to commit or in the committal order served will not result in the order being set aside except insofar as the interests of justice require this to be done.

3. Interests of justice will not require an order to be set aside where there is no prejudice caused as a result of errors in the application to commit or in the order to commit. When necessary the order can be amended.

4. When considering whether to set aside the order, the Court should have regard to the interests of any other party and the need to uphold the reputation of the justice system.

5. If there has been a procedural irregularity or some other defect in the conduct of the proceedings which has occasioned injustice, the Court will consider exercising its power to order a new trial unless there are circumstances which indicate that it would not be just to do so.

In the circumstances the Court, in my opinion, can and should rightly, on the facts of this case, invoke its powers under r. 7(6) and I do so accordingly. The defect in the Order that is, the failure to indorse the penal notice therein is not fatally flawed. As I said earlier, the second defendant knew or is deemed to have known of the terms of the Order and hence no prejudice is thereby caused to him for such irregularity.

I then ordered counsels to address me on the substantive matter, that is, the committal proceedings.

The relevant portion of the Order (Encl. 43) is as follows:

> 1. The second defendant acknowledges that:
>
> (a) ...
>
> (b) the second plaintiff is the assignee of the films entitled "PUTERA" and "SEMBILU" and pursuant to the acknowledgement given in sub-paras. ... and (b) above, the second defendant whether by himself, his employees, servants or agents agree to restrain:
>
> (c) ...
>
> (d) from reproducing in any material form or otherwise infringe the first plaintiff's rights to the films entitled "PUTERA" and "SEMBILU";

The second plaintiff contended that the second defendant has breached the terms of the Order by the following acts:

"PUTERA"

On 3 October 1996 a raid was conducted at PUSAT VIDEO DALMAN, the second defendant's premises and a PUTERA tape was seized.

Rashidy bin Abdul Rahman in his affidavit (Encl. 35) affirmed at:

(i) para. 5 that a PUTERA tape was seized from PUSAT VIDEO DALMAN;

(ii) para. 6 that the PUTERA tape seized was marked "not for sale or rental"; and

(iii) para. 6 that the second defendant admitted that he had purchased the PUTERA tape for rental purposes.

Tahir b. Puteh in his affidavit (Encl. 38) affirmed that the PUTERA tape was seized and the tape is marked "not for rental".

Tin Sin Koi in his affidavit (Encl. 37) affirmed at:

(i) para. 4 that the second defendant has no licence or any right in the PUTERA tape;

(ii) para. 6 that the second defendant has no licence or any right to offer the PUTERA tape for rental.

The second defendant by his affidavit (Encl. 45) at paras. 2 and 3 admitted that all the tapes rented out in his shop are original tapes and would therefor include the PUTERA tape.

"SEMBILU"

On 17 September 1996 by renting or causing to be rented to one Norzaily bin Mohd. Nor a video tape entitled "SEMBILU" which has been reproduced without the consent of the second plaintiff. In support thereof, by way of the affidavit of Norzaily bin Mohd. Noor (Encl. 36) the rental card of the "SEMBILU" tape is exhibited as "N-2"

Tin Sin Koi in his affidavit (Encl. 37) affirmed at:

(i) para. 4 that the second defendant has no licence or any right in the "SEMBILU" tape; and

(ii) para. 5 that the second defendant has no licence or any right to offer the "SEMBILU" tape for rental.

The second defendant in his affidavit (Encl. 45) affirmed at para. 2 that any tapes of "SEMBILU" rented by his shop would be original tapes.

It is not disputed that the second plaintiff is the assignee of the films entitled "PUTERA" and "SEMBILU" which assignment was given by the first plaintiff who had the rights to the said films.

The issue is whether the second defendant, his employees, servants or agents has breached para. 1(d) of the Order, namely:

> by reproducing in any material form or otherwise infringe the first plaintiff's rights to the films entitled "PUTERA" and "SEMBILU".

In respect of the claim of Tin Sin Koi in para. 3 of his affidavit (Encl. 37) that the "SEMBILU" tape was reproduced without the licence of the plaintiffs, it is a bare statement without supporting evidence as to how he came to such a conclusion. The second defendant in his affidavit (Encl. 45) affirmed that the "SEMBILU" tape was an original copy and not a reproduced one. In a

civil contempt case, proof must be proof beyond all reasonable doubt (*Tin Shi Kian & Anor. v. Red Rose Restaurant Sdn. Bhd.* [1984] 2 MLJ 313. In the premises I would go on the basis that it is common ground that the tape "SEMBILU" is an original tape.

Law

There are two parts to infringement of copyright under s. 36 of our Copyright Act 1987 ('Act') namely local and imported articles.

Section 36 reads:

(1) Copyright is infringed by any person who does, or causes any other person to do, without the licence of the owner of the copyright, an act the doing of which is controlled by copyright under this Act.

(2) Copyright is infringed by any person who, without the consent or licence of the owner of the copyright, **imports** an article into Malaysia for the purpose of:

(a) selling, letting for hire, or by way of trade, offering or exposing for sale or hire, the article;

(b) distributing the article:

(i) for the purpose of trade; or

(ii) for any other purpose to an extent that it will affect prejudicially the owner of the copyright; or

(c) by way of trade, exhibiting the article in public,

where he knows or ought reasonably to know that the making of the article was carried out without the consent or licence of the owner of the copyright. (emphasis added)

We are here concerned with s. 36(1) of the Act.

An act the doing of which is controlled by copyright under the Act is provided by s. 13(1) of the Act. In so far as is relevant to this case the second plaintiff is relying on s. 13(1)(e) of the Act, which is:

13. Nature of copyright in literary, musical or artistic works, films and sound recordings.

(1) Copyright in a literary, musical or artistic work, a film or a sound recording shall be the exclusive right to control in Malaysia:

(a) ...

(b) ...

(c) ...

(d) ...

(e) the distribution of the copies of the work to the public by sale, rental, lease or lending,

The Counsel for the second defendant submitted to the Court to consider, by analogy, that it would appear that parallel imports, which may be defined as articles which are lawfully manufactured overseas but imported by a person other than the copyright or right holder in the country of import are not caught by s. 36(2) of the Act, by referring to the UK legislation as well as the Australian legislation on copyright. In that event she was of the view that the Court should read s. 13(1)(e) in that light or otherwise it would lead to absurdity. (See p. 128 of *Copyright Law in Malaysia* by Khaw Lake Tee, 1994). According to the learned author, at p. 130, "Assuming that the right of distribution is not exhausted, the effect would be to render the legislative intention of permitting paralled imports nugatory. While on the one hand, parallel imports are not prohibited by s. 36(2), on the other, the sale or other commercial dealings in respect of such parallel imports may be forbidden by reason of s. 13(1)(e)".

The Counsel for the second plaintiff submitted that even in the UK legislation, there are exceptions, for example, in respect of sound recording, films and computer programmes in respect of the distribution right. According to her, even assuming that paralled imports under s. 36(2) of the Act are allowed, it would be wrong to consider it favourably with s. 13(1)(e). She contended that the provisions of s. 13(1)(e) are clear and to construe otherwise would open the flood gate if consent of the copyright holder is not necessary or it is exhausted.

I observe that the Counsel for the second defendant would appear to have conceded that her reliance on the UK legislation on the parallel imports provision is not to use it for the purpose of interpretation of s. 13(1)(e) of the Act but purely for a better understanding of the issue raised. It may well be good to have a better understanding of the issue raised but it is not relevant to the issue before me as we are here dealing with the interpretation of s. 36(1) (not s. 36(2)) read with s. 13(1)(e) of the Act. The word "copies"

referred to in s. 13(1)(e) must necessarily refer to copies lawfully or unlawfully made.

Even the learned author in *Copyright Law in Malaysia* referred to by me, seemed to hold the view that under the Act, the distribution right is not exhausted even after a sale, thus entitling the right holder to control not only the rental but the resale of the copies of his work (see p. 102 thereof). According to the learned author on the same page, "Not surprisingly, the growth of the rental industry soon led to calls for a right for the copyright owners to participate in this lucrative and expanding industry. In Malaysia, these calls were heeded when the distribution right was included for the first time as a restricted act under the Copyright Act 1987."

It would seem clear to me that the legislative intent in enacting s. 13(1)(e) is to heed the calls for the distribution right as a restrictive act for the copyright owners to participate in this lucrative and expanding industry. In my view, it is therefore proper and right for the Court to give effect to the legislative intent. If at all s. 13(1)(e) would to lead to absurdity, as contended by Counsel for the second defendant, when read with s. 36(2) of the Act, such matter should be addressed and corrected in another forum but not the Court. I would reiterate that we are here dealing with the interpretation of s. 13(1)(e) read with s. 36(1) and not 36(2) of the Act.

As the second defendant did not deny that he was in possession of the original tapes "PUTERA" and "SEMBILU" and they were rented without the licence or permit of the second plaintiff, the assignee of the rights to the said tapes, he had committed an infringement under s. 36(1) read with s. 13(1)(e) of the Act. By para. 1(d) of the Order, the second defendant, whether by himself, his employees, servants or agents agreed to restrain from **reproducing in any material form or otherwise** the films "PUTERA" and "SEMBILU".

As the second defendant knew or deemed to have known of the terms of the Order, clearly on the evidence before me, I find the second defendant has committed contempt by breaching the terms of the Order.

I will now invite Counsel for the second defendant to address the Court in respect of the committal order that I should make against the second defendant.

After hearing Counsel for the second defendant and the second defendant himself as to the order that I should make, I consider that a fine would be appropriate in the circumstances of the case and I impose a fine of RM1,000 in default three months imprisonment on the second defendant.

Reported by Ling Hea Hoon